

**STATE OF VERMONT  
PUBLIC SERVICE BOARD**

Docket No. 6812

Petition of Entergy Nuclear Vermont Yankee,     )  
LLC and Entergy Nuclear Operations, Inc.         )  
pursuant to 30 V.S.A. Sec. 248 for Certificate     )  
of Public Good to modify certain generation       )  
facilities   )

**MEMORANDUM OF UNDERSTANDING AMONG ENTERGY NUCLEAR VERMONT  
YANKEE, LLC, ENTERGY NUCLEAR OPERATIONS, INC. AND THE VERMONT  
DEPARTMENT OF PUBLIC SERVICE**

With respect to the above-captioned docket, those entities on behalf of which a signature appears at the end of this document stipulate and agree as follows:

WHEREAS, Entergy Nuclear Vermont Yankee, LLC ("Entergy VY") and Entergy Nuclear Operations, Inc. ("ENO") filed a petition with the Board pursuant to 30 V.S.A. Sec. 248 requesting the issuance of a certificate of public good ("CPG") in connection with the modification of certain generation facilities at the Vermont Yankee Nuclear Power Station ("VYNPS"); and

WHEREAS, the Department of Public Service ("Department") has filed testimony raising certain concerns regarding the petition;

NOW, THEREFORE, the parties hereto agree as follows:

**STATE BENEFIT FUNDS ("Fund")**

1. Within ninety (90) days after the approval of this Memorandum of Understanding by the Public Service Board ("Board"), the State of Vermont acting through the Agency of Administration shall establish the following funds:

**Environmental Benefit Fund:**

The principal and earnings of this fund shall be used for the "Clean & Clear Water Initiative".

**Low Income Benefit Fund:**

The principal and earnings of this fund shall be used for emergency support for low-income residents. This aim will be accomplished by contributing the funds to the WARMTH

program with all benefit flowing to individuals according to the program's established eligibility criteria.

Entergy Fund for Economic Benefit:

The principal and earnings of this fund shall be used for new business attraction on behalf of the state of Vermont. This fund shall be under the direction of Department of Economic Development.

**Monies shall be allocated to the three funds as follows:**

The Entergy Fund for Economic Benefit shall receive the \$200,000 cash payment as described in Paragraph 2. The Emergency Benefit Fund shall be allocated \$250,000 per annum with the remainder allocated to the Environmental Benefit Fund.

2. During the Uprate Period, Entergy VY shall make contributions to the Fund as hereinafter provided. The Uprate Period shall commence on the date the NRC approves the Uprate. Between that date and the date of the approval of the Claimed Capability Audit-Establish, as that term is defined by ISO, to be performed in the fall 2004, Uprate Power to be shared pursuant to this Section 2 means that power sold above VYNPS's existing winter claimed capability of 529.08 MW at market rates. After the approval of the referenced Claimed Capability Audit-Establish, Uprate Power shall have the same meaning as that term is used in Section 8 of the Power Purchase Agreement between Entergy VY and Vermont Yankee Nuclear Power Corporation dated September 6, 2001 (the "PPA").

The contribution of Entergy VY shall be based on the Uprate Power generated by VYNPS, which shall have the same meaning as that term is used in Section 8 of the PPA. During each calendar year or portion thereof during the Uprate Period, Entergy VY shall pay to the Fund an amount based upon twenty (20%) percent of the Uprate Power sold by Entergy VY in each hour and shall equal fifty (50%) percent of the weighted average price per MWH received by Entergy VY for Uprate Power generated during such calendar year in excess of the Strike Price set forth below:

Calendar Year	Strike Price (per MWH)
2004	\$31.80
2005	\$28.50
2006	\$28.00
2007	\$29.00
2008	\$30.00

<b>Calendar Year</b>	<b>Strike Price (per MWH)</b>
2009	\$31.00
2010	\$32.00
2011	\$33.00
2012	\$34.00

The foregoing payment shall be made no later than March 31 next following such calendar year and shall be accompanied by reasonable, verifiable documentation to support such calculation. The price of such Uprate Power shall be based on the actual amount received by Entergy VY from the sale thereof adjusted for any charges and credits assessed to Entergy VY as a result of scheduling deviations between the Day Ahead and Real Time energy markets. The sale of the uprate power may be made pursuant to bilateral contracts, sales into the market or a combination thereof. Contributions to the Fund shall be made to the Secretary of the Administration to be deposited in the respective funds in accordance with this agreement.

Entergy VY shall have no obligation to make contributions with respect to any hour, nor shall such hour be included in any calculations, during which VYNPS operates at less than fifty (50%) percent of its then seasonal claimed capability for all or a portion of such hour.

Entergy VY agrees to provide a one-time, initial payment of \$200,000 within ninety (90) days of Board approval of this MOU and issuance of the Certificate of Public Good referred to in Section 3(c) below without material qualifications or conditions as initial funding to be included in the Entergy Fund for Economic Development.

### **OUTAGE PROTECTION**

3. The Department agrees that Attachment A hereto (submitted as Exhibit CCW-3, Ratepayer Protection Proposal) provides adequate protection against potential costs associated with interruption of the PPA subject to the following modifications:

a. Entergy VY will reimburse the Utilities, as defined in Attachment A, for net loss incurred because of Entergy's failure to deliver the Utilities' full VY allotment of energy under the PPA regardless whether the Replacement Energy is actually required for their native needs. It is further agreed that in this MOU and in Attachment A hereto, Replacement Energy means the power not delivered to the utilities as their full VY allotment of energy under the PPA. Attached as Attachment C is a formulaic depiction of how a calculation of payment or savings under Attachment A would be calculated.

b. If any dispute, disagreement, claim or controversy exists between Entergy VY and the Utilities arising out of or relating to this section, specifically paragraphs 3a, 3b, and 3c, such disputed matter shall be submitted to a committee comprised of one designated agent of Entergy VY, on the one hand, and the Utilities, on the other hand. Such committee shall be

instructed to attempt to resolve the matter within twenty days thereafter. If such designees do not agree upon a decision within thirty days after the submission of the matter to them, any party may petition the Board for relief.

c. Without duplicating amounts paid under clause 3a, if in any hour during a Measurement Period (as defined in Attachment A) the Utilities are not provided their full VY allotment of energy under the PPA under the circumstances and during the period provided in Attachment A at a price per MWH greater than the MID DPS Market Price Forecast set forth on Attachment B hereto plus \$10.00 ("High Energy Price"), then Entergy VY will pay the Utilities an amount equal to the cost of Replacement Energy if and to the extent the cost thereof is in excess of the High Energy Price; provided, however, the amount to be paid to the Utilities in any Measurement Period shall not be greater than \$318,000 for Central Vermont Public Service Corporation and \$182,000 for Green Mountain Power Corporation (in each case the "Excess Loss Cap"). If the Excess Loss Cap is not fully utilized in any Measurement Period, the excess shall be carried over to the next Measurement Period(s) and added to the Excess Loss Cap. Likewise, if the Utilities incur losses due to the applicability of the High Energy Price which are not compensated due to the Excess Loss Cap, such losses shall be carried over to the next Measurement Period(s). Any savings which are realized by the Utilities for Replacement Energy (i.e., Replacement Energy costs are less than PPA prices) shall first offset Losses under Section 2(b) of Attachment A and then offset losses under this provision. To the extent such savings are not fully utilized to offset losses, they shall be carried over to the next Measurement Period(s). Reporting of losses or savings shall be in accordance with the terms of Attachment A. This additional outage protection shall terminate in the event the PPA shall terminate for any reason whatsoever. The Excess Loss Cap shall be reduced proportionately if the Measurement Period is less than six months. Attached as Attachment C is a formulaic depiction of how a calculation of payment or savings under this section would be calculated.

#### **ADDITIONAL PROVISIONS:**

4. This Memorandum of Understanding is governed by Vermont law and any disputes under this Memorandum of Understanding shall be decided by the Board.

5. Entergy VY agrees to perform all uprate related transmission upgrades required by ISO-New England, including all of those listed in ISO-New England's letter of October 8, 2003, attached hereto as Attachment D, or as amended in the future by ISO-New England.

6. The parties hereto, including the Department, agree that, with the Memorandum of Understanding, the Department finds that Entergy VY and ENO have provided evidence supporting affirmative findings under each applicable criteria of 30 V.S.A. Sec. 248.

Such findings shall include but not be limited to the following:

(a) that Entergy VY's agreement to perform all transmission upgrades required by ISO-New England in connection with the System Study satisfy §§ (b) (3) and (b) (10) of § 248;

(b) that Entergy VY's installation of 125 hp fans in the cooling towers is consistent with all applicable §248 criteria and, in particular, will not have an unduly adverse impact on aesthetics under §248(b) (5).

7. The Department agrees that the Board should issue an Order:

(a) Directing the issuance of a Certificate of Public Good approving the modification of the generating facilities at VYNPS; and

(b) Determining that the modification of VYNPS by Entergy VY and ENO in conjunction with this MOU will promote the general good of the State.

8. The Department will support issuance of the orders and findings of the Board specified herein subject to the Department's obligations under Title 30 of the Vermont Statutes Annotated.

9.. The Department will cooperate in further Board proceedings and sponsor testimony necessary to support this Memorandum of Understanding.

10. The parties agree that this Memorandum of Understanding shall not be construed by any party or tribunal as having precedential impact on any future proceeding involving the parties, except as necessary to implement this Memorandum of Understanding or to enforce an order of the Board resulting from this Memorandum of Understanding.

11. The parties have made specific compromises to reach this Memorandum of Understanding. In the event that the Board fails to grant the CPS identified in Paragraph 7 (a) or fails to approve this Memorandum of Understanding in its entirety or acts to overrule or disapprove any portion hereof, each such party agrees that their agreement set forth herein may terminate, if such party so determines in its sole discretion, and each shall have the same rights as each would have had absent this Memorandum of Understanding.

ENTERGY NUCLEAR VERMONT YANKEE, LLC

By: \_\_\_\_\_  
Name: Jay K. Thayer  
Title: Vice-President of Operations

ENTERGY NUCLEAR OPERATIONS, INC.

By: \_\_\_\_\_  
Name: Jay K. Thayer  
Title: Vice-President of Operations

STATE OF VERMONT  
DEPARTMENT OF PUBLIC SERVICE

By: \_\_\_\_\_  
Name: David O'Brien  
Title: Commissioner of the Department of Public Service

